

ESTTA Tracking number: **ESTTA57295**

Filing date: **12/12/2005**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	BULLY HILL VINEYARDS, INC.
Granted to Date of previous extension	01/25/2006
Address	8843 GREYTON H. TAYLOR MEMORIAL DRIVE HAMMONDSPORT, NY 14840 UNITED STATES
Attorney information	Stephen L. Baker Baker and Rannells PA 626 North Thompson Street Raritan, NJ 08869 UNITED STATES b.gaynor@br-tmlaw.com Phone:908-722-5640

### Applicant Information

Application No	78500649	Publication date	09/27/2005
Opposition Filing Date	12/12/2005	Opposition Period Ends	01/25/2006
Applicant	A Donkey And Goat, LLC #102 1890 Bryant Street San Francisco, CA 94110 UNITED STATES		

### Goods/Services Affected by Opposition

Class 033. All goods and sevicees in the class are opposed, namely: Wine
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Attachments	donkey.pdf ( 5 pages )
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Signature	/stephen baker/
Name	Stephen L. Baker
Date	12/12/2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Bully Hill Vineyards, Inc.

Opposer

Mark: A DONKEY AND  
GOAT

v.

Serial No.: 78500649

A Donkey And Goat, LLC

Filed: October 15, 2004

Applicant

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NOTICE OF OPPOSITION  
SECTION 1063

In the matter of trademark application Serial No. 78500649 filed by Applicant, A Donkey And Goat, LLC ("Applicant"), for A DONKEY AND GOAT as a trademark for wine ("Applicant's Goods"), published for opposition in the Official Gazette of September 27, 2005, the time to oppose having been extended by Opposer, Bully Hill Vineyards, Inc., a corporation organized and existing under the laws of the State of New York and located and doing business at 8842 Greyton H. Taylor Memorial Drive, Hammondsport, New York 14849, believes that it will be damaged by the registration of the alleged mark shown in Application Serial No. 78500649 and opposes the registration under the provisions of 15 U.S.C. §1063 (Trademark Act of 1946, Section 13).

As grounds of opposition, it is alleged that:

1. Opposer is the owner of the marks LOVE MY GOAT, LE GOAT, HAPPY HERD, GOATS TO GO!, GOAT WHITE, GOAT RED, and GOAT BLUSH, and phrases such as "THEY HAVE MY NAME AND HERITAGE BUT THEY DIDN'T GET MY GOAT!", and variations thereof ("Opposer's Marks") as trademarks, trade names, and as a service marks as applied to a wide range of goods and services directed to wholesale and retail consumers.

2. Opposer is the owner of the various goat designs and variations thereof (collectively "Opposer's Marks and Designs"), including but not limited to various designs on its wine labels, advertisements, promotional items, and goods such as stationery, t-shirts, hats and caps, sweat shirts, jackets, jewelry, key chains, posters, bottle stoppers, figurines and the like ("Opposer's Goods") sold at Opposer's winery and through other outlets, all of which feature artistic representations of a goat, as well as various other barnyard animals, as trademarks, trade names, and as service marks as applied to a wide range of goods and services directed to wholesale and retail consumers.

3. Opposer is now and for many years has been trading as and known by the Opposer's Marks and Designs, identifying Opposer as the source of a wide variety of goods, including wine, the same being identical to Applicant's Goods intended to be offered under its alleged mark A DONKEY AND GOAT.

4. Opposer is now and for many years has been trading as and known by the Opposer's Marks and Designs, identifying Opposer as the source of a wide variety of promotional items, goods and services related thereto under Opposer's Marks, including but not limited to, stationery, t-shirts, hats and caps, sweat shirts, jackets, jewelry, key chains, posters, bottle stoppers, figurines and the like sold at Opposer's winery and through other outlets.

5. Opposer is now and has been, for many years prior to any date which may be claimed by Applicant, engaged in the use of Opposer's Marks and Designs for wine and goods and services related thereto.

6. Opposer is now and has been, for many years prior to any date which may be claimed by Applicant, engaged in the sale of a wide variety of wine and goods and services related thereto under Opposer's Marks and Designs.

7. Since long prior to any date which may be claimed by Applicant, Opposer on its own behalf has been, and is now engaged in the sale of the goods identified in paragraphs 3 and 4 hereinabove under the Opposer's Marks and Designs in interstate commerce.

8. Opposer is the owner of, inter alia, the following U.S. trademark registration(s), all of which are in good order, registered and in the name of and owned by the Opposer.

Mark	Registration No.	Goods
LOVE MY GOAT*	1527275	Wine
LE GOAT*	1360952	Wine

\*denoted incontestable registration

9. Opposer's use of the term and mark GOAT, and its variations, have been a central theme throughout the course of its business, starting with the adoption of the goat theme in approximately 1980.

10. The use by Opposer of the Opposer's Marks and Designs for the Opposer's goods and services alleged herein, is long prior to any date which may be lawfully claimed by Applicant, and Opposer has priority.

11. Upon information and belief, Applicant intends to distribute and sell its goods through the same channels of trade as Opposer, and direct its respective goods to the same ultimate consumer as Opposer.

12. The Opposer's Marks and Designs and Applicant's A DONKEY AND GOAT mark are confusingly similar when applied to the goods of the parties.

13. The goods of Applicant and Opposer are identical, and Applicant's intended use of A DONKEY AND GOAT in connection with its goods is without the consent or permission of Opposer.

14. Since Opposer owns the Opposer's Mark and Designs by virtue of prior use, mistake or deception as to the source of origin of the goods will arise and will injure and damage the Opposer and its goodwill.

15. The registration of the mark A DONKEY AND GOAT to Applicant will cause the relevant purchasing public to erroneously assume and thus be confused, misled, or deceived, that Applicant's goods are made by, licensed by,

controlled by, sponsored by, or in some way connected, related or associated with Opposer, all to Opposer's irreparable damage.

16. Opposer believes that it is and will be damaged by registration of the mark applied by Applicant.

WHEREFORE, Opposer prays that the application for registration of A DONKEY AND GOAT, Serial No. 78500649, filed on October 15, 2004, be denied and that this Opposition be sustained.

Respectfully submitted for  
Opposer  
Bully Hill Vineyards, Inc.

By: \_\_\_\_\_

Stephen L. Baker  
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626 North Thompson Street  
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(908) 722-5640

Dated: December 12, 2005

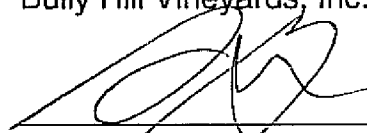
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By:

A handwritten signature in black ink, appearing to read "S. Baker", is written over a horizontal line.

Stephen L. Baker  
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Dated: December 12, 2005